

**TOWN OF PLYMPTON ZONING BOARD OF APPEALS
CERTIFICATE OF DECISION ON
APPEAL OF CEASE AND DESIST ORDER
CONTRACTOR'S YARD**

RECEIVED

SEP 11 2017

TOWN CLERK'S OFFICE
PLYMPTON

To: Plympton Town Clerk
Plympton Town Hall
Five Palmer Road
Plympton, MA 02367

Re: APPELLANT: Gene Beliveau
APPEAL: May 4, 2017 Cease and Desist Order, Contractor's Yard
PROPERTY: 0 Winnetuxet Road, Map 21, Lot 1-24
ZONING: Agricultural-Residential, Business

This matter concerns a parcel of land located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24) and the Appellant's use of the property in support of the business of Plymouth County Paving, LLC. By Cease and Desist Order dated May 4, 2017, the Zoning Enforcement Officer determined that the property was being used as a Contractor's Yard, a use prohibited in the Agricultural-Residential and Business Zoning Districts. Accordingly, the Zoning Enforcement Officer ordered the Appellant and all persons acting on its behalf or in concert with it to immediately cease and desist all use of the property for contractor's yard and commercial vehicle storage; the trucking of earth, gravel and other materials to and from the property; and to remove from the property all of the materials, vehicles and equipment associated with such use.

On May 30, 2017, the Appellant filed an appeal with the Zoning Board of Appeals (the "Board"). The completed application was received by the Town Clerk on July 6, 2017. The Board advertised and noticed a public hearing regarding the application and the public hearing opened on August 15, 2017 and was continued to August 24, 2017 and September 7, 2017. During the public hearing, the Appellant, through its authorized representatives presented evidence and testimony, and the Board took additional evidence and testimony from members of the public and the Zoning Enforcement Officer. The Board conducted a site visit on August 23, 2017 at 10:00 a.m.

The following Board members were present at the public hearings at which substantive testimony and other evidence was presented and then deliberated toward a decision in this matter: Kenneth A. Thompson, Arthur B. Morin, Jr. and David F. Alberti.

FINDINGS OF FACT

1. The public hearing for the Appeal was duly noticed and advertised and duly mailed to the Appellant and Abutters.
2. The Appellant was represented at the hearing by Mr. Gene Beliveau, Manager, Plymouth County Paving, LLC and Attorney Kathleen A. Reagan, Esq.

3. The property is located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24) (hereinafter referred to as the "Property"), and is located partially within the Business Zoning District and partially within the Agricultural-Residential Zoning District.
4. The Property is comprised of a total of 27.2 acres of land. The Business Zoning District extends to a point 400 feet from the center of Main Street. The remainder of the Property is located in the Agricultural-Residential Zoning District.
5. The Property abuts property located at 376 Main Street, which is the principal place of business for Plymouth County Paving, LLC.
6. Plymouth County Paving LLC, provides residential and commercial asphalt paving and maintenance services, excavation and demolition, and commercial-industrial snow and ice management for properties located off-site.
7. The Appellant uses a portion of the Property for the storage of commercial vehicles, equipment and supplies related to the business of Plymouth County Paving, LLC.
8. The remainder of the Property is forest land, subject to a Forest Management Plan. The Forrester Management Plan was signed by Mr. Beliveau under the pains and penalties of perjury. As part of the Plan, Mr. Beliveau acknowledged that the Property "was acquired by the present owner in 2005 to expand the area for the paving company to provide buffer for the same. . . . Part of the land is being used by the paving company." See, Forrester Management Plan, p. 1 of 17. The Plan further provides that "the landowner's management objective is to maintain the property for open space and wildlife habitat, and to keep a land buffer around the area used by the paving company." See, Forrester Management Plan, p. 3 of 17.
9. The Forest Management Plan was approved by the Executive Office of Environmental Affairs with the express provision that "1.74 acres that includes buildings and area used by paving company" are excluded.
10. At the hearing, the Zoning Enforcement Officer presented and described an aerial photograph of the Property. The photograph depicted a large cleared-out area, with numerous commercial vehicles and other wheeled equipment, and large piles of material that appeared to be gravel.
11. The Board conducted a site visit on August 23, 2017. Based on the Board's observations during the site visit, the area used by the paving Company is concentrated to the area closest to the 376 Main Street property.
12. During the site visit conducted by the Board, Board members did not observe any active forestry activities at the Property.

13. During the site visit, members observed a large pile of crushed stone and a smaller pile of hardened asphalt that were located on the Property at a point within the portion of the Property located in the Agricultural-Residential District.
14. During the hearing, Mr. Beliveau stated that the crushed stone was used on the Property as a finish material to grade the access road surface that runs adjacent to the wooded area maintained by the Forest Management Plan. He also stated that the smaller asphalt pile on the Property was waste material unloaded from his paving equipment.
15. Simultaneously with the filing of this Appeal, the Appellant filed an application for a Special Permit to keep more than three but less than ten commercial vehicles on the Property.
16. By decision dated September 7, 2017, the Board voted to grant the application for Special Permit, allowing the Appellant to keep more than three but less than ten commercial vehicles on the Property, subject to certain conditions as part of the Special Permit.

DETERMINATIONS

On September 7, 2017, following all of the testimony and evidence presented during the public hearing, the Board voted 3-0 to make the following determinations:

1. The property is located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24) (hereinafter referred to as the "Property"), and is located partially within the Business Zoning District and partially within the Agricultural-Residential Zoning District.
2. Use of property for Contractor's Yard purposes is prohibited in both the Agricultural-Residential and Business Zoning Districts.
3. The term "Contractor's Yard" is defined in Section 10 of the Town's Zoning Bylaw as "premises used by a building contractor, general contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of operative wheeled equipment."
4. Although the term "Contractor" is not defined in the Town's Zoning Bylaw, the Board applies ordinary and common usage of the term as defined in the Oxford Dictionary as: "a person or company that undertakes a contract to provide materials or labor to perform a service to do a job."
5. The Board finds that the Appellant is a contractor, insofar as it is a company that contracts to provide materials and labor to perform a service or to do a job. More specifically, the Appellant's business includes residential and commercial asphalt paving and maintenance services, excavation and demolition, and commercial-industrial snow and ice management for properties located off-site.

6. The Board further finds that the Appellant is using the Property as a Contractor's Yard insofar as the Property is being used for the storage of equipment and supplies and the parking of operative wheeled equipment for use in connection with the paving business. This finding is consistent with statements made by the Appellant, under pains and penalties of perjury, in order to secure approval of a Forestry Management Plan for the Property.

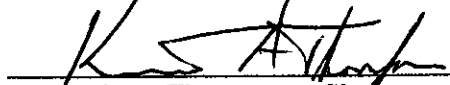
7. The Board rejects the Appellant's contention that the materials and equipment on the Property are used to support agricultural uses on the Property. Although a portion of the Property is subject to a Forestry Management Plan, that Plan expressly acknowledges that a portion of the Property is used for the paving business. This and other admissions that the land is used by the paving company, together with the Board's observations of the site, which revealed no active forestry activities, supports the conclusion that the materials and equipment ordered removed by the Zoning Enforcement Officer are not for the support of an agricultural use.

DECISION

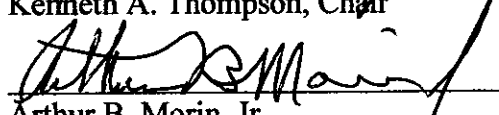
On motion made and seconded, the Board voted 3-0, based upon the Findings and Determinations made above, to affirm the Zoning Enforcement Officer's May 4, 2017 Cease and Desist Order regarding the use of the property located at 0 Winnetuxet Road (Assessors Map 21, Lot 1-24), for Contractor's Yard purposes, provided, however, that the Appellant may keep more than three but less than ten commercial vehicles on the property in accordance with the terms of the Special Permit granted by the Board.

The following Board members certify the above decision is a true record of the actions and votes of the Board.

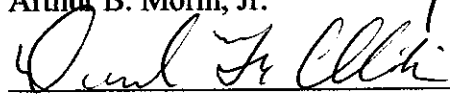
TOWN OF PLYMPTON ZONING BOARD OF APPEALS



 Kenneth A. Thompson, Chair



 Arthur B. Morin, Jr.



 David F. Alberti.

DATED: September 7, 2017 FILED: October 2, 2017

Any person aggrieved by this decision may appeal to a court of competent jurisdiction pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty days after the date of filing of such notice in the office of the Town Clerk.